

SETTLEMENT AND RELEASE AGREEMENT

WHEREAS, Sugar Creek Township ("Township") is a legal entity and political subdivision created and operating pursuant to Title V of the Ohio Revised Code;

WHEREAS, the East Wayne Joint Fire District ("District") is a separate legal entity and a taxing district created and operating pursuant to Section 505.371 of the Ohio Revised Code;

WHEREAS, the District was formed by the passage of a joint resolution in 2012 by the Village of Dalton and Marshallville, and the townships of Sugar Creek and Baughman;

WHEREAS, pursuant to the joint resolution, each participating political subdivision contracted for fire and emergency medical services with the District and paid a fee to the District for those contracted services;

WHEREAS, in the summer and fall of 2015, differences arose between the District and the Township which included concerns, grievances and differences relating to the provision of services within the areas served by Kidron Volunteer Fire Department (hereinafter "KVFD");

WHEREAS, the Township Board of Trustees, being concerned about the continued provision of fire and emergency services within the Township, executed an agreement with the District Board of Trustees for the provision of fire and emergency services for a period of five years should the Township Board of Trustees withdraw from the District;

WHEREAS, this five-year agreement between the Township and the District for the provision of fire services was executed on December 30, 2015;

WHEREAS, on April 11, 2016, the Township Board of Trustees voted to void and rescind the five-year contract with the District, and immediately thereafter formally withdrew from the District effective January 1, 2017;

WHEREAS, on January 1, 2017, the Township officially withdrew from the District;

WHEREAS, on June 29, 2016, the District filed a declaratory judgment action against the Township Board of Trustees in the Court of Common Pleas of Wayne County, Ohio requesting that a determination as to whether the five-year contract between the parties was and is valid;

WHEREAS, the parties engaged in extended discovery and motion practice which included an appeal to the Ninth District Court of Appeals;

WHEREAS, the parties have expended considerable time, effort and resources in litigating this matter;

WHEREAS, the parties recognize that it is in their best interests to resolve their disputes and to work jointly for the betterment and protection of their respective residents and taxpayers;

WHEREAS, the parties jointly recognize that the December 30, 2015 five-year agreement, may be terminated by mutual and written agreement of parties; and

WHEREAS, the parties have agreed to mutually terminate the December 30, 2015 five-year agreement, and any and all amendments and modifications thereof, if any;

THEREFORE, BE IT RESOLVED that the parties have hereby settled their differences and have agreed to end the pending litigation with this Settlement and Release Agreement (hereafter "Agreement") on the following terms and conditions:

1. 2015 Five-Year Agreement

The parties hereby terminate the December 30, 2015 five-year agreement, and any and all amendments and modifications thereto, if any, and agree that all terms and conditions of the December 30, 2015 five-year agreement and any amendments, including amounts to be paid annually for costs of protection, are fully satisfied by the terms of this Agreement.

2. Settlement Payment

Township shall pay the District the sum of Ninety-Eight Thousand Two Hundred Eighty-Nine and 44/100 dollars (\$98,289.44), which amount reflects payment in the amount of \$35,000 for services rendered in 2017 and 54% of the levy monies collected in years 2018 and 2019 for services rendered for those years, minus \$35,000 per each year already paid for years 2018 and 2019. This payment shall be made to the District no later than May 31, 2020.

The Township shall also pay to the District the sum of Fifty Thousand Dollars (\$50,000), which the parties agree shall be solely used for joint training available to all primary responders operating in the Township, and shall be paid in ten (10) annual payments of \$5,000 each, as follows: \$5,000 on June 1, 2021, with the following nine (9) \$5,000 payments paid to the District on June 1st of each year thereafter until the entire \$50,000 is paid in full. The parties further agree that the District will establish a separate revenue fund and appropriations line item specifically for these training monies to be used for joint training available to all primary responders operating in the Township.

3. 2020 One-Year Agreement

Contemporaneous with execution of the Agreement, the parties shall also execute a new one-year agreement for the period of January 1, 2020 through December 31, 2020, for the District's provision of fire protection and emergency medical services to the Township. The one-year agreement (entitled "Agreement for Fire Protection and Emergency Medical Services") is attached to this Agreement and incorporated herein as Exhibit A.

4. KVFD and Township Contracts

The Township may continue to independently contract for the provision of fire and emergency medical services in the area traditionally served by the KVFD, which is the same area designated

as the KVFD's response area in Appendix 1 to Exhibit A. The District will not have any primary responsibility for the provision of services in this area, but will provide services via any mutual aid agreements established between KVFD and the District.

5. District – Township Litigation Temporary Agreement

This Agreement and Exhibit A supersede and take the place of any existing interim or temporary agreements between the parties that are now rendered void.

6. Auditor's Lawsuit

David Wengerd has filed an action against the Wayne County Auditor, being Case No. 2019 AP-X 000002 on the docket of the Court of Common Pleas of Wayne County, Ohio. The Township has filed a motion to intervene in that lawsuit. The Township shall withdraw its motion to intervene in that case. The Township agrees that it will no longer pursue any claims relating to the Auditor's division of funds resulting from the Township's withdrawal from the District.

In Case No. 2019 AP-X 000002, David Wengerd seeks to recover funds from the District he claims are due the Township as a result of the auditor's alleged improper division of assets pursuant to R.C. 505.371. In the event Mr. Wengerd, or any other party, recovers funds as a result of the court's determination that the auditor miscalculated the amount due the Township as a result of the Township's withdrawal from the District, the Township agrees to transfer any recovered funds to the District.

7. Release of All Claims

The parties hereby mutually agree to release all claims against each other, whether known or unknown, arising out of the Township's withdrawal from the District, the division of funds between the Township and the District arising out of the auditor's accounting, any claims for breach of contract, bad faith, abuse of process, or any other cause of action. This release shall include any and all claims by a party against the other's former and current employees, agents, board members, representatives, administrators, successors, and assigns.

8. Waiver of Interest

The parties are specifically releasing any claims or causes of action that they had, have, or may have in the future for any form of interest payments, be it in the form of interest from the date of the incident, interest from the date the claims were first submitted, interest into the future, interest from the agreement to settle all the claims until the time that this within Agreement is signed by the undersigned, any statutory interest claims that may be available to the plaintiff pursuant to the statutes of the State of Ohio or any other state, and any interest claims that have been defined in the Ohio Supreme Court case of *Hartmann v. Duffey* (2002), 95 Ohio St. 3d 456; 2002 Ohio 2486; 768 N.E. 2d 1170; 2002 Ohio LEXIS 1387.

9. Dismissal of Common Pleas Court Case 16-CVC-H-000318

The parties hereby agree to dismiss the case now pending in the Court of Common Pleas, being case No. 16-CVC-H-000318. The parties' attorneys are hereby authorized to execute and file with the court a dismissal entry which shall read: "The claims of the parties by and between each other are hereby settled and dismissed, with prejudice. The parties agree, and the Court specifically finds, that Matthew Nussbaum did not violate any Ohio rules or ethics provisions relating to a conflict of interest. Each party to bear its own costs. The court shall retain jurisdiction to enforce the terms and conditions of the settlement agreement reached between the parties."

10. Governing Laws

This Agreement shall be governed by the laws of the State of Ohio. Any disputes regarding this release shall be venued in the Wayne County Common Pleas Court, Wayne County, Ohio.

11. Amendments to the Agreement

This Agreement may not be altered, amended or modified by oral representation made before or after the execution of this Agreement. All amendments or changes of any kind must be in writing, executed by both parties.

12. Neutral Interpretation and Counterparts

The parties shall be deemed to have cooperated in the drafting and preparation of this Agreement. Hence, any construction to be made of this Agreement shall not be construed against any Party. This Agreement may be executed in counterparts and each executed counterpart shall be effective as the original. All faxed, emailed, or electronic signatures affirming this Agreement constitute an original signature.

13. No Interpretation of Captions or Headings

The captions and headings within this Agreement are for ease of reference only and are not intended to create any substantive meaning or to modify the terms and clauses either following them or contained in any other provision of this Agreement.

14. Advice of Counsel

Each Party to this Agreement acknowledges that it has had the benefit of advice of competent legal counsel or the opportunity to retain such counsel with respect to its decision to enter into this Agreement. The individuals whose signatures are affixed to this Agreement in a personal or representative capacity represent that they are competent to enter into this Agreement and are doing so freely and without coercion by any other Party or non-party hereto.

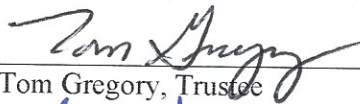
15. Non-Admission of Liability

The parties agree that neither this Agreement nor the performance by the parties hereunder constitutes an admission by any of the parties of any liability, breach of any contract, or any other wrongdoing of any type by either party.

Signed this 19th day of March, 2020.

SUGAR CREEK TOWNSHIP

Scott Widmer, Trustee



Tom Gregory, Trustee

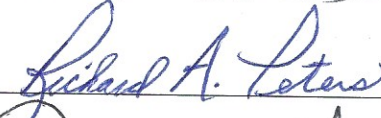


Jonathon Hofstetter, Trustee

Signed this 18 day of March, 2020.

EAST WAYNE JOINT FIRE DISTRICT

 Chair



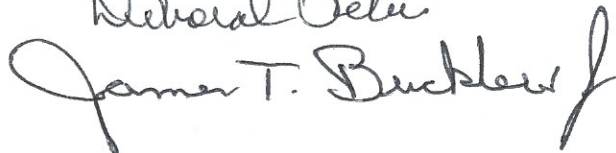
Richard A. Peters



Donald K. H...



Deborah Oeter



James T. Bucklew

EXHIBIT A

[2020 ONE-YEAR AGREEMENT]

AGREEMENT FOR FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES

This Agreement made and entered into this 19th day of March, 2020, by and between Sugar Creek Township, duly authorized by Resolution 2020-03-19-04, passed by the Board of Trustees of Sugar Creek Township on the 19th day of March, 2020, and the East Wayne Joint Fire District, duly authorized by Resolution 2020-2, passed by its board of fire district trustees on the 18 day of March, 2020.

WITNESSETH:

WHEREAS, under its police powers, and in the interest of public safety, Sugar Creek Township (hereinafter "Township") may establish all necessary rules to guard against the occurrence of fires to protect the property and lives of its citizens;

WHEREAS, the Township has the primary responsibility to fight fires within the township, but may enter into agreements or contracts with another county, township, municipality, private fire company or firefighting agency to supply the fire protection service;

WHEREAS, the Township is authorized by R.C. 9.60 and R.C. 505.37 to enter into a contract with a firefighting agency to supply fire protection and emergency medical services;

WHEREAS, the East Wayne Joint Fire District (hereinafter "District") is a separate legal entity, created by R.C. 505.371, which operates as a firefighting agency and emergency medical service provider, staffed and equipped, and capable of providing prompt, efficient, and effective service to the inhabitants of the Township;

WHEREAS, "Fire Protection" shall mean the program offered by the District that provides a total fire protection program including, but not limited to, fire suppression, hazardous material control, rescue, communications, training, and disaster planning;

WHEREAS, "Emergency Medical Services" shall mean the program offered by the District that provides for the pre-hospital care and transportation of an ill or injured person, including, but not limited to, the provision of basic and/or advanced life support and transportation of patients to local hospitals;

NOW THEREFORE, in consideration of the mutual covenants expressed herein, the sufficiency of which is hereby acknowledged, the parties agree that the District shall provide fire protection and emergency medical services to the Township when such services are needed within the territory of the Township set forth and marked as "EWJFD" on the attached "Appendix 1", herein incorporated by reference, which shall be known as the "Response District."

IT IS FURTHER AGREED between the Township and the District, that:

1. The District shall provide fire protection and emergency medical services in the Response District during the term of this Agreement and any renewal term;

2. The District shall render fire protection and emergency medical services in areas of the Township outside of the Response District through mutual aid when called upon to do so, as resources are available;
3. The District shall, at its own expense, obtain and maintain a suitable number of fire apparatus properly equipped to provide fire suppression, and to employ properly trained and certified personnel sufficient to adequately staff such fire apparatus;
4. The District shall, at its own expense, obtain and maintain a suitable number of vehicles properly equipped to provide emergency medical services, and employ properly trained and certified personnel sufficient to adequately staff such vehicles;
5. The District shall require that all individuals appointed as firefighters become certified as basic fire fighters within one year of the date of appointment. The District shall require that all firefighters on its active roster comply with the State of Ohio Continuing Education requirements for firefighters (54 hours every three years). The District shall require that all personnel providing emergency medical services be certified, at a minimum, as Emergency Medical Responders (EMR). The District shall require that all personnel that provide emergency medical services to residents maintain their level of certifications through continuing education. Proof of state certification shall be provided to the Township within 90 days of the execution of this Agreement. All members who might be required to use respiratory protection equipment shall be SCBA fit tested;
6. The District shall obtain and maintain in force adequate insurance liability coverage for all District fire and EMS apparatus, vehicles, and District personnel, which shall include an insurance policy with minimum liability coverage in the amount of \$1,000,000, which names the Township as an additional insured. Copies of the District insurance policies naming the Township as an additional insured shall be provided to the Township within 90 days of the execution of this Agreement;
7. The Township and the District hereby recognize that the District has mutual aid responsibilities and other contractual agreements with other entities, and consequently firefighting and emergency medical services may not be available to the Township when the necessary equipment and personnel are being utilized to provide services to the other entities so contracted with the District. However, the District shall insure that adequate equipment and manpower are being provided to the Township residents in the Response District at all times. To that end, the District shall adopt an Automatic Mutual Aid Box Alarm policy by which it shall automatically request aid to respond to an incident occurring within the Response District. The automatic mutual aid plan is subject to approval by the Township Board of Trustees and its current version is on file with the Township;
8. Further, said services shall be rendered exclusively over roads which are passable or to areas that are accessible as determined at the discretion of the firefighter;

9. The term of this Agreement shall commence January 1, 2020, and shall continue for a period of one (1) year, ending December 31, 2020;
10. The Township shall pay to the District fifty percent (50%) of fire levy monies collected in year 2020, in one lump sum payment, in the amount of Seventy-Five Thousand dollars (\$75,000). This payment shall be made to the District no later than November 30, 2020;
11. In the event that voters of Sugar Creek Township fail to approve or renew a fire levy to fund the services addressed by this Agreement, then the Township will determine what other resources are at the Township's disposal for fire protection and emergency medical services and, after making said determination, shall pay to the District 50% of those resources on the same schedule delineated in Paragraph 10 herein above. The determination of what resources are available for fire protection and emergency medical services under the circumstances envisioned in this paragraph shall solely be the Township's;
12. The District agrees to submit to the Township by the 15th of each month, a statement listing all fire protection and emergency medical service calls made during the previous month in the Response District showing for each call the date, the time and the location by address;
13. In the event that either party is in default of any provision of this Agreement, the aggrieved party shall give written notice to the other of the breach within thirty (30) days of its discovery. The party accused to be in breach of this Agreement shall have thirty (30) days of written notice of breach to correct the breach or provide a detailed written statement explaining why it is not in breach or why more time is needed to cure. If the accused party does not so respond within thirty (30) days of written notice of breach or otherwise cure the alleged breach, the aggrieved party can opt to declare this Agreement terminated by sending written notice to the accused party. However, if the accused party does timely respond within thirty (30) days of written notice of breach sent by the aggrieved party, but the aggrieved party still does not believe the breach has been cured or believes an extension to cure is unreasonable, then either party may demand that the dispute over the alleged breach be referred to mediation or binding arbitration. A demand for mediation or binding arbitration must be made within thirty (30) days from the date of the timely response of the accused party's written response to the aggrieved party's initial allegation of breach. If a timely demand for mediation or binding arbitration is not made by either party, the aggrieved party can opt to declare this Agreement terminated by sending written notice to the accused party. If a timely demand for mediation or binding arbitration is made, and in the event that parties are not able to agree on an individual to serve as a mediator or arbitrator, either party may petition the administrative judge of the Court of Common Pleas of Wayne County to appoint a mediator or arbitrator. Mediation or arbitration shall take place within ninety (90) days of written demand by either party for mediation or binding arbitration. The parties shall equally share the cost of the mediator or arbitrator.

14. The District agrees that, upon the Township's request, the executive representatives of the District shall attend meetings of the Township Board of Trustees. Upon the Township's written request, said executive representatives shall provide, within fourteen (14) days of said request, a current roster of their active members, a copy of each Ohio Fire Incident Report submitted to the State of Ohio for each structure fire response in the service area, a copy of the internal incident report for each response to any commercial structure within the Response District, and a summary of EMS billing for each run, including, but not limited to, the amount billed for each run, the amount received for each billing event, the total amount collected year-to-date, and the total amount outstanding year-to-date;
15. The District may recover any costs for emergency medical service, rescue and fire services, and materials used in providing medical, fire and rescue services, from Medicare, Medicaid, or private insurance coverages;
16. The District shall, during the period of this Agreement, provide Workers' Compensation coverage for all active members performing fire protection or emergency medical services within the Response District. The proof of Workers' Compensation coverage shall be provided to the Township upon request;
17. The District shall not discriminate on the basis of race, gender, creed, religion, or national origin in the hiring or employment of any of its personnel;
18. All prospective responders shall be subject to a criminal background check prior to membership in the District. Under no circumstances may the District employ any individual that has been convicted of a felony, or a misdemeanor involving a truth offense, if said offense(s) or period(s) of probation was within the past ten (10) years;
19. The Township's Fire Prevention Officer (FPO) shall be appointed by the Township in compliance with Section 505.38 of the Ohio Revised Code. The FPO shall have primary responsibility for a) conducting all prevention and inspection activities within the Response District, and b) conducting all fire investigations within the Response District, subject to the authority of the Division of the State Fire Marshall's office. The FPO shall be a State of Ohio Certified Fire Safety Inspector. For the term of this Agreement, the parties acknowledge that the current appointed FPO for year 2020 is a representative from the KVFD. However, if this Agreement is renewed, renegotiated or otherwise extended, it is the intent of the parties going forward that the District and the KVFD will annually alternate the nomination of the Township FPO.
20. The District shall adopt a drug and alcohol testing policy and shall require that all new appointees submit to and successfully pass a drug and alcohol screening test. The District shall require, in its drug and alcohol testing policy, that any member of the District who is involved in an accident, is injured on the job, or is displaying signs of substance abuse, submit to a mandatory drug test. The District's policy may also include provisions for random drug testing;

21. All members of the District who drive vehicles to calls shall provide and maintain proof of a valid driver's license in compliance with Ohio's Automobile Insurance Financial Responsibility Act (Drivers Liability Insurance Requirements). Proof of insurance shall be provided to the Township upon request;
22. The Township shall have no responsibility for dispatching, rather the District shall be responsible for securing its own dispatch services;
23. This Agreement is binding upon the Township and the District, and the successor of each party;
24. This Agreement may be modified or amended only by a written agreement signed by all of the parties hereto;
25. Any notice or other communication required under this Agreement shall be deemed to have been given to each party if sent via postal service to the following addresses:

Sugar Creek Township
P.O. Box 213, Dalton, OH 44618

East Wayne Joint Fire District
P.O. Box 134, Dalton, Ohio 44618

26. If any portion of this Agreement proves to be invalid or unconstitutional, the same shall not be held to invalidate or impair the validity, force, or effect of any other portion of the Agreement unless it clearly appears that such other portion is wholly or necessarily dependent for its operation upon the portion so held invalid or unconstitutional; and
27. All questions concerning the validity or meaning of this Agreement or relating to the rights and obligations of the Parties with respect to performance under this Agreement shall be construed and resolved under the laws of the State of Ohio.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

EAST WAYNE JOINT FIRE DISTRICT:

**SUGAR CREEK TOWNSHIP BOARD
OF TRUSTEES
Wayne County, Ohio:**

By: *Bleke Nunston*
Its: _____

Scott Widmer, Trustee

By: *Richard A. Peters*
Its: _____

Tom Gregory
Tom Gregory, Trustee

Donald K. H.

Jonathan H. Stettin
Jonathan H. Stettin

Richard Peters
James T. Bucklew



Jonathon Hofstetter, Trustee

APPENDIX 1

[RESPONSE DISTRICT MAP]

Approximate Fire District Populations within Sugar Creek Township -- Census 2010 Data

